

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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**UNITED STATES OF AMERICA,**

Plaintiff,

**-vs-**

**Case No. 11-C-1123  
05-CR-128**

**DERAY OWENS,**

Movant.

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**DECISION AND ORDER**

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On December 12, 2011, DeRay Owens filed a motion to vacate his sentence under 28 U.S.C. § 2255. Owens was sentenced on December 14, 2006 and he didn't file an appeal, so the government moves to dismiss on the grounds that Owens' motion is untimely. Owens responds that he made an oral motion on the grounds of ineffective assistance of counsel at sentencing, and the motion he filed in December simply memorializes that oral motion, which was effectively pending for almost five years. The Court acknowledges the creativity and imagination behind this argument, but the duty to liberally construe *pro se* pleadings cannot reach back in time to file a § 2255 motion that was never filed. Section 2255 motions must be signed under penalty of perjury and filed with the Clerk of Court. Rules 2(b)(5), 3(a), Rules Governing Section 2255 Proceedings.

Owens also asserts that he made an oral motion for reconsideration, which tolls the time to file an appeal (and thus the time to file this motion). If Owens actually made such a motion, the motion was denied.

**IT IS HEREBY ORDERED THAT** this matter is **DISMISSED** as untimely filed.

Dated at Milwaukee, Wisconsin, this 21st day of June, 2012.

**BY THE COURT:**

A handwritten signature in black ink, appearing to read "Rudolph T. Randa", written over a horizontal line.

**HON. RUDOLPH T. RANDA**  
**U.S. District Judge**